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SENSITIVE
SIPDIS

STATE FOR E, EEB, EAP/EP AND EAP/J
NSC FOR JIM LOI
USTR FOR WENDY CUTLER AND MICHAEL BEEMAN
STATE PAS TO DOJ STUART CHEMTOB AND FTC RANDOPH TRITELL AND
DEIRDRE SHANAHAN

E.O. 12958: N/A
TAGS: [ECIN](#) [ECON](#) [ETRD](#) [KJUS](#) [JA](#)
SUBJECT: JAPAN: NEW ADMINISTRATION TO SPUR CHANGE IN
COMPETITION POLICY?

¶1. (SBU) SUMMARY: Japan Fair Trade Commission (JFTC) Chairman Takeshima suggests that the Democratic Party of Japan (DPJ) is more friendly to the JFTC and antitrust policy than the outgoing Liberal Democratic Party, but how such influence may manifest itself is not yet fully apparent. As an independent commission, the JFTC is relatively less affected by the change of government compared to other ministries and agencies. The JFTC is reviewing its current administrative hearing system for contesting JFTC orders, and JFTC Chairman Kazuhiko Takeshima says it will be abolished in the near term. The scope of such abolition, however, remains unclear.
END SUMMARY.

¶2. (SBU) Chairman Takeshima suggested that the DPJ is more friendly to the JFTC as an agency than the LDP during a September 29 call by Ambassador Roos. He cited the DPJ's strong support from middle class voters, who believe in competition policy, unlike the companies in construction and other fields supporting the LDP, some of which engage in bid-rigging.

¶3. (SBU) Chairman Takeshima said he expects Japan's Antimonopoly Act (AMA) to be revised to abolish the current administrative hearing system for contesting JFTC orders. The business and legal communities have long advocated abolition, arguing that challenging JFTC orders in court provides greater due process. The precise scope of abolition, however, remains unclear. We understand from reliable contacts that the Chairman prefers sweeping abolition, but that serious questions exist regarding whether the courts are willing and prepared to handle cases other than cartels. Concern also exists that retailers of gasoline, liquor, consumer electronics, and other interests likely to be affected by decisions concerning unfair trade practices, may exert pressure on the DPJ to retain the present authority of the JFTC, which they believe they can influence unlike any court. The JFTC has been conducting a complete examination of the administrative hearing system relating to cartels, mergers and acquisitions, among other AMA violations. Takeshima himself did not specify the extent of any abolition, and JFTC staff are not commenting on what the final decision will be. Abolition would require revision of the AMA itself, and is not expected until 2010.

¶4. (SBU) Experts suggest that the electoral victory of the DPJ, which has promised to abolish the administrative hearing system, will spur change. Professor Masahiro Murakami of

Hitotsubashi University, for example, told emboff that he expects forthcoming abolition to cover all cases of AMA violations, not just cartels. Noting the JFTC's recent order against Qualcomm, Murakami highlighted how, particularly in high-profile cases, allowing companies to challenge JFTC orders in court is more fair than the present system. It is highly unlikely the very body that is prosecuting an order will reverse an order once issued, he emphasized. The embassy has identified three instances where the JFTC has reversed an earlier order in recent decades. Although Murakami's view is widely shared, not all experts concur. Professor Jiro Tamura of Keio University suggested to emboff that, in view of concerns about the courts' handling of non-cartel cases, it is possible to envision a compromise solution under which the administrative hearing system would be abolished for cartels only. Similarly, former JFTC Secretary-General Akinori Uesugi told emboff he believes companies will, in practice, find themselves in a disadvantageous position when challenging a JFTC order in court.

15. (SBU) In contrast with many Japanese ministries and agencies, the JFTC has been relatively unaffected by the recent change of administration. Chairman Takeshima's term does not expire until 2012, and JFTC staff continue to work on projects underway. JFTC staff have confirmed, for example, that AMA amendments concerning exclusionary monopolization will become effective in January 2010 and that they are drafting the final guidelines, which they plan to release as soon as possible. They did not give a specific date, but reaffirmed that it will be well ahead of when the

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revised law becomes effective. We understand the JFTC received about 40 public comments, including a detailed submission by the American Chamber of Commerce in Japan.
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